

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

M.T.G., INC., d/b/a MATRIX
TECHNOLOGIES GROUP,

Case No. 95-48268
Chapter 7

Debtor.

Judge Thomas J. Tucker

**ORDER GRANTING “AMENDED MOTION FOR ENTRY
OF ORDER VACATING DISQUALIFICATION ORDER”**

This case is before the Court on the motion filed by Todd Halbert and Guy C. Vining, Trustee, entitled “Amended Motion for Entry of Order Vacating Disqualification Order” (Docket # 1128).

On September 11, 2003, the United States District Court for the Eastern District of Michigan issued its “Memorandum Opinion and Order,” which reversed this Court’s “Order Setting Aside Order Authorizing Trustee’s Employment of Todd M. Halbert as Special Counsel,” “with respect to Halbert’s representation [of the Trustee] for the purpose of the Fraud on the Court claims,” and remanded “the remaining portion of that Order . . . for procedures consistent with [the Memorandum Opinion and Order].” *Vining v. Taunt (In re MTG, Inc.)*, 298 B.R. 310, 319 (E.D. Mich. 2003).¹ Charles Taunt appealed the district court’s decision to the United States Court of Appeals for the Sixth Circuit. On April 8, 2005, the court of appeals dismissed the appeal for lack of appellate jurisdiction. *Taunt v. Vining (In re MTG, Inc.)*, 403 F.3d 410 (6th Cir. 2005).

¹ Visiting Judge Jeffrey R. Hughes issued the Order that was reversed by the district court. That Order is referred to below as the “Disqualification Order.”

The Court has considered the written objections of Charles J. Taunt; Plunkett & Cooney, P.C.; Comerica Bank (and the individuals who Comerica referred to, in its objection, as other “Comerica Respondents”); and Miller Canfield, as well as oral argument held on the matter. Under the circumstances, and in compliance with the mandate of the district court, the Court will grant the motion and the relief as indicated below.

In granting the motion and ordering the relief below, this Court finds and concludes that:

1. The district court’s mandate reversing, rather than vacating and remanding, the Disqualification Order “with respect to Halbert’s representation for the purpose of the Fraud on the Court Claims,” 298 B.R. at 319, compels this Court to vacate the Disqualification Order and reinstate Halbert’s employment as special counsel, at a minimum, with respect to the matters described in paragraph 6(d) of Halbert’s amended employment application. *See* 298 B.R. at 317, text accompanying notes 13-15, 317 nn. 13, 14, 313 n. 5 (district court opinion refers to paragraph 6(d) as “the fraud upon the court claim”).
2. Because this Court must approve Mr. Halbert’s employment as special counsel regarding the Fraud on the Court matters, in order to comply with the district court’s mandate, it is in the best interest of the estate, including interests of efficiency and economy, that Mr. Halbert also serve as special counsel for the estate with respect to the other matters at issue.

IT IS ORDERED that the motion filed by Todd Halbert and Guy C. Vining, Trustee, entitled “Amended Motion for Entry of Order Vacating Disqualification Order” (Docket # 1128) is GRANTED, subject to the provisions of this Order.

IT IS FURTHER ORDERED that

- (A) The Disqualification Order is vacated;
- (B) Except as modified by this Order, the Order Authorizing Trustee’s Employment of Todd Halbert as Special Counsel remains in full force and effect;
- (C) Mr. Halbert may continue to represent the Trustee as special counsel on those matters set forth in Paragraph 6(a)-(f) and 6(I) of the Trustee’s Amended

Application for Authority to Employ Special Counsel, including but not limited to representation of the Trustee in Adversary Proceeding No. 03-4950, entitled *Guy C. Vining, Trustee v. Comerica Bank, et al.*;

- (D) Notwithstanding Paragraph 6(g) of the Amended Employment Application, Mr. Halbert may not represent the Trustee on matters related to the Trustee's reporting duties under 18 U.S.C. § 3057 and the Michigan Rules of Professional Conduct;
- (E) Notwithstanding Paragraph 6(h) of the Amended Application, Mr. Halbert may represent the Trustee in future litigation only upon appropriate application and order of the Court.

IT IS FURTHER ORDERED that no later than **October 28, 2005**, Todd Halbert must file and serve on the United States Trustee, Guy C. Vining, Trustee, and on the attorneys listed as "cc's" below, a verified statement demonstrating that Todd Halbert does not presently represent or hold any interest adverse to the debtor or to the estate with respect to the matters on which Mr. Halbert is to be employed as special counsel. *See generally* 11 U.S.C. §§ 327(e); 328(c); Fed.R.Bankr.P. 2014(a).

IT IS FURTHER ORDERED that this Order is without prejudice to the right of any party in interest or the United States Trustee to file a motion in the future seeking disqualification, in whole or in part, of Todd Halbert as special counsel, on any ground(s) not inconsistent with the mandate of the district court.

Date: October 14, 2005

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge

cc: Todd M. Halbert
Guy C. Vining, Trustee
Robert J. Diehl, Jr.
Michael J. Reynolds
Mark E. Shreve
Claretta Evans
Brian D. Einhorn
Jeffrey M. Frank